



Administrative Law Section Newsletter

Vol. XXVIII, No. 2

Elizabeth W. McArthur, Editor

December 2006

What? The Administration Commission May Grant An Exemption To the APA?

by Robin Rosenberg and Lawrence E. Sellers, Jr.

Yep; a little-used provision in the Administrative Procedure Act (APA) authorizes the Administration Commission, upon application of an agency, to exempt any process or proceeding governed by the Act from one or more of the requirements of the Act, if certain conditions are met. The Commission may not exempt an agency from any requirement until it establishes alternative procedures to achieve the agency's purpose, which must be consistent with the purposes

of the APA. An exemption and any prescribed alternate procedures terminate 90 days after the then-current or next regular legislative session. See § 120.63, Fla. Stat.

On August 22, 2006, the Agency for Persons with Disabilities ("APD") filed a petition with the Administration Commission seeking an exemption to section 120.57(1). The petition was a direct response to the First District Court of Appeal's decision in *J.M. vs. APD*, Case No. 1D06-0183

(Fla 1st DCA, August 8, 2006). The *J.M.* decision reversed APD's order denying J.M. a DOAH hearing on his challenge to APD's decision to reduce his benefits under the Medicaid waiver for persons with developmental disabilities. Prior to the *J.M.* decision, APD referred all of its administrative hearings to the hearing officers in the Department of Children and Family Services.

The First District ruled that the explicit language in the developmen-

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From the Chair

by Booter Imhof

In my first column, I invited the membership to become more involved with the section. I am renewing that call. Please visit our website at: <http://www.fladminlaw.org> for more information. I mentioned that one of the ways to get involved was to attend the 2006 Pat Dore Administrative Law Conference. Many of you did and the conference was a huge success. Andy Bertron and Seann Frazier did an excellent job organizing the conference which was held in Tallahassee on October 19 and 20, 2006. Of course, Jackie Werndli, our section administrator, was invaluable. Conference audiotapes/cds are

available for purchase (see order form on page 3).

In addition to the excellent presentations on the substantive law issues, there were some very interesting issues and information in the presentations. Elizabeth Tarbert, the Director of the Ethics Department of The Florida Bar, had several interesting comments to make. One of the most disturbing was the issue of metadata. I had heard the term, but did not know anything about it. According to an article in the June 2004 issue of *LAWPRO* magazine entitled, "Beware the Dangers of Metadata," by Dan Pinnington, metadata is described as

"data about data." It is a hidden level of extra information that is automatically created in a computer file such

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CHAIR'S MESSAGE

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as a Word or WordPerfect document. While some metadata can be easily seen within the program that created the file, most hidden metadata must be viewed using a binary file editor. However, sometimes this hidden data can be viewed accidentally, for example, when a WordPerfect file is converted to a Word file.

The article explains more about how to view this data and can be found at <http://www.practicepro.ca/LawPROmag/metadata.pdf>. The article also notes why lawyers should be aware and maybe concerned about metadata. When a document is shared electronically, via e-mail or CD for example, the document includes both visible and invisible information. Some of the metadata can often include confidential information and could be potentially damaging or embarrassing if seen by others. The article gives suggestions on reducing or eliminating the metadata from your files. The Florida Bar Professional Ethics Committee has issued an opinion on metadata. The opinion can be found at <http://www.floridabar.org/tfb/TFBETOpin.nsf/b2b76d49e9fd64a5852570050067a7af10a1b5e3a86df495a8525714e005dd6fd?OpenDocument>.

There were two more presentations that had practical everyday information that I think you will find useful. Scott Boyd made a presentation on the Joint Administrative Procedure Committee's website and representatives from the Department

of State made a presentation on the new Florida e-Rulemaking website.

Scott's presentation was interrupted several times by spontaneous applause from the crowd. Why, you ask? Scott and his staff have been hard at work on JAPC's website and the results are fantastic. The website can be found at <http://www.japc.state.fl.us/>. I am going to list just some of the things you can do on the website. A rule number can be inserted in the search box and it will return a link to the JAPC records on the rule. This link will give you all the events that have occurred on that rule. In his presentation, Scott used rule 67-57.001 by the Florida Housing Finance Corporation to illustrate. The events include links to the Notice of Rule Development, Notice of Proposed Rulemaking, correspondence from JAPC to the agency and from the agency to JAPC, and other events. Keywords can also be searched and will return all rules currently under review with the word in the title or text of the rulemaking notice. The same is true for phrases. If a challenge has been filed, there is a link to the DOAH case information page and if a final order has been entered, there is a link to that, too. Finally, there is a link to the DCA case docket if an appeal has been filed. Rules can also be searched by agency or by all agencies. One of the most awesome links is to the Legal Research section. This section gives you an annotated Chapter 120 administrative law database, amendments to Chapter 120 by year and Chapter 120 as it appeared in that year, and other links. The annotated Chapter 120 administrative law database also provides

annotations for the different parts of Chapter 120 and includes DOAH cases, court cases, articles, and Attorney General opinions. The site has many more features and I suggest you go and play with it. Scott indicated that his office is always ready to add a case, opinion, or article that is not listed if you are aware of one.

I mentioned the new website for the Department of State e-Rulemaking. That site can be found at <http://flrules.com>. I will talk more about this site in a future column.

Another item I would like to talk to you about is the Law School Liaison Committee chaired by Cathy Sellers. Cathy did a wonderful job in organizing a panel discussion at the FSU Law School last month. The panel consisted of Bob Cohen, Chief Administrative Law Judge; Scott Boyd, Executive Director and General Counsel for the Joint Administrative Procedures Committee; Andy Bertron, private practitioner and Chair-Elect of the Executive Council; Mary Ellen Clark, Assistant Attorney General; the moderator, Cathy Sellers; and me. The panelists spoke to the law students about how we got involved in administrative law and some of our experiences. We explained what administrative law is and what administrative lawyers do from the perspectives of the Legislature, DOAH, and administrative law practitioners. The panel was well received and it generated a lot of interest in the practice of administrative law. Cathy has indicated she would like to have similar programs at the other law schools. The University of Florida is covered, but we need contacts at the other law schools. Please contact Cathy or Jackie Werndli if you are interested in organizing a panel discussion in conjunction with a law school in your area.

Patrick L. "Booter" Imhof is the Staff Director for the Senate Committee on Regulated Industries. He has been employed by the Florida Legislature for over 25 years in both the Senate and the House of Representatives. Mr. Imhof received his B.A. degree in Political Science from the University of Florida in 1972 and his J.D. degree from South Texas College of Law, Houston, Texas in 1978. He is a member of The Florida Bar and the State Bar of Texas. He is currently the Chair of the Administrative Law Section of The Florida Bar.

This newsletter is prepared and published by the Administrative Law Section of The Florida Bar.

- Patrick L. (Booter) Imhof** (imhof.booter@flsenate.gov)..... **Chair**
- J. Andrew Bertron, Jr.** (andy@hueylaw.com) **Chair-elect**
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- Jackie Werndli, Tallahassee** (jwerndli@flabar.org) **Program Administrator**
- Colleen P. Bellia, Tallahassee** (cbellia@flabar.org) **Layout**

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- Florida e-Rulemaking
- Reception Honoring Judges
- The 1996 Amendments to the APA: A Ten Year Retrospective
- Administrative Law Case Update
- The New (Improved?) Revised Model State Administrative Procedure Act
- Ethics: Case Studies and Discussion
- DOAH: All the Process That's Due and Then Some
- The Top Ten Cases Since the 1996 Amendments to the APA
- What is JAPC Up to Now?
- Rulemaking, Then and Now

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APPELLATE CASE NOTES

by Mary F. Smallwood

Licensing

Oakcrest Early Education Center, Inc. v. Department of Children and Families, 31 Fla. L. Weekly 2239 (Fla. 5th DCA 2006)

Oakcrest Early Education Center was involved in an incident where one of the children in its center was left in a center van for two and a half hours. The child was dehydrated and in serious condition when admitted to the hospital. The child ultimately recovered. Oakcrest's license to operate a day care center was due to expire on June 13. The incident with the child occurred on June 7. Until that time, the Department had been prepared to reissue the license for another year. The Department immediately issued an order denying Oakcrest's request for an extension of the license on June 8. In addition, on June 9, the Department entered an emergency order suspending Oakcrest's existing license. Since the license would have expired three days after the emergency order was issued, the Department did not institute suspension or revocation proceedings pursuant to Sections 120.569 and 120.57, Fla. Stat. Oakcrest appealed the emergency suspension order.

Oakcrest also filed a petition for hearing challenging the denial of its request for renewal of the license. The administrative law judge entered a recommended order recommending denial of the license renewal. At that hearing, the Department entered into evidence its emergency order.

On appeal of the emergency suspension order, the court reversed the emergency order. It rejected the argument of the Department that it would have been useless to provide a Section 120.57 hearing subsequent to the issuance of the emergency order since there was only three days remaining. In that respect, the court noted that the introduction of the emergency order into evidence in the license renewal hearing could have influenced the decision to deny. More

importantly, the court held that the failure to proceed to revocation or suspension proceedings was a clear denial of due process of law.

Adjudicatory Proceedings

Stinson v. Winn, 31 Fla. L. Weekly 2203 (Fla. 1st DCA 2006)

Stinson, a teacher in Brevard County, appealed an order of the Education Practices Commission suspending her teaching license for two weeks and placing her on probation. Stinson had been accused of providing inappropriate help to students taking the Florida Comprehensive Assessment Test ("FCAT"). At the hearing, Stinson had presented the testimony of one student witness while the Commission had presented the testimony of several other students who testified that she had given them answers to questions or otherwise assisted them. The administrative law judge entered a recommended order rejecting the testimony of the Commission's witnesses and accepting the testimony of Stinson's witness. The Commission rejected those findings of fact.

On appeal, the court reversed. It noted that it is the administrative law judge's responsibility to weigh the credibility of witnesses. The fact that Stinson had only one witness in comparison to the number of witnesses presented by the Commission was irrelevant. Moreover, it is irrelevant that there may have been competent evidence introduced to support the Commission's position. So long as competent substantial evidence supports the administrative law judge's findings, the Commission could not reject them.

Puig v. Florida Engineers Management Corporation, 31 Fla. L. Weekly 2602 (Fla. 3rd DCA, October 18, 2006)

Puig challenged an administrative complaint filed by the Florida Engineers Management Corporation ("FEMC") disciplining his license.

FEMC alleged that Puig had signed and sealed plans not prepared by him or under his direct supervision and that he had assisted an unlicensed person practice engineering. At the administrative hearing, Puig testified that he had reviewed plans prepared by an engineer whose license had previously been revoked and oversaw the completion of those plans. The administrative law judge, based on Puig's testimony, recommended dismissal of the complaint.

FEMC rejected a finding of fact in the recommended order that Puig had not intended to assist another in the unlicensed practice of engineering, characterizing it as a conclusion of law.

On appeal, the court reversed and remanded. It held that FEMC did not meet the requirements of Section 120.57, Fla. Stat. The court held that Puig's intention was not relevant to the ultimate determination; instead, the only basis for finding a violation was the signing and sealing of the plans prepared by another engineer. The administrative law judge's determination that the plans were properly signed and sealed was based on competent substantial evidence.

Public Records

Hillier v. City of Plantation, 31 Fla. L. Weekly 2096 (Fla. 4th DCA 2006)

Hillier, a former city councilman, appealed an order of the trial court denying his writ of mandamus and petition for injunctive relief. Hillier argued that the trial court had erred in finding that the City provided him access to all of the documents he requested. Hillier had made numerous public records requests which the City had responded to; however, at trial, Hillier testified that certain documents had not been produced. The City's witnesses, on the other hand, testified that some of the records requested did not exist and all of the others had been produced to the extent Hillier's request could be

understood. The trial court adopted the City's proposed final order verbatim.

On appeal, the court affirmed. It held that the issue of whether the City produced all of the requested records was one of fact, and the trial judge was able to evaluate the credibility of the witnesses.

The Coconut Grove Playhouse, Inc. v. Knight-Ridder, Inc., 31 Fla. L. Weekly 2102 (Fla. 3rd DCA 2006)

The Coconut Grove Playhouse appealed an order of the trial court requiring that it produce certain records after the Playhouse failed to respond to an order of the court requiring it to appear at a hearing with such documents. Knight-Ridder had argued that the Playhouse was a public agency.

On appeal, the court reversed. It concluded that the order was tantamount to a default judgment against the Playhouse for failure to comply with a subpoena for discovery materials.

Point of Entry

J.M. v. Florida Agency for Persons with Disabilities, 31 Fla. L. Weekly 2121 (Fla. 1st DCA 2006)

J.M. appealed a decision of the Agency for Persons with Disabilities ("APD") denying him a Section 120.57 hearing on its determination reducing the number of hours of residential habilitation available to him. J.M. is an autistic, mentally retarded individual living in a group home. APD denied the request for a hearing on the grounds that it was exempt under Section 120.80(7), Fla. Stat., which exempts from Section 120.57 hearings held within the Department of Children and Families related to certain social and economic programs.

On appeal, the court reversed. The court noted that Section 393.065(8), Fla. Stat., specifically provided that APD clients or their representatives shall have the right to a Section 120.57 hearing on agency decisions relative to the client's initial support plan or the annual review thereof. Without specifically addressing the extent of the exemption contained in Section 120.80(7), the court concluded that the more specific statute (Chapter 393) controlled over the more general statute (Chapter 120).

Rulemaking

Financial Services Commission v. The Florida Insurance Council, Inc., 31 Fla. L. Weekly 2156 (Fla. 1st DCA 2006)

The Florida Insurance Council challenged certain rules of the agency on the grounds that the agency failed to follow proper procedures in the adoption of the rules. The administrative law judge found the rules to be invalid exercises of delegated legislative authority as the Financial Services Commission failed to review and approve the proposed rules prior to their publication in the Florida Administrative Weekly.

On appeal, the court affirmed. The court rejected the agency's argument that the Commission had delegated the authority to approve the rules to the Office of Insurance Regulation. It noted that under Section 20.121(3)(c), Fla. Stat., the Commission was the agency head for purposes of rulemaking. That authority could not be delegated.

Appellate Jurisdiction

Wovas v. Tousea Homes, Inc., 31 Fla. L. Weekly 2330 (Fla. 2d DCA, September 8, 2006)

Wovas and other lot owners sought arbitration by the Division of Land Sales, Department of Business and Professional Regulation, of a dispute with the developer regarding control of the homeowners' association. Section 720.311, Fla. Stat., mandates binding arbitration in such cases. The developer filed a petition for a writ of prohibition in the circuit court, challenging, *inter alia*, the constitutionality of Section 720.311. The lot owners then sought a writ of prohibition in the district court of appeal to prevent the circuit court from acting on the developer's request.

The appellate court issued the writ of prohibition. It held that the circuit court had no jurisdiction to review state administrative action unless specifically provided by statute. In this case, the review was within the jurisdiction of the appellate court under Section 120.68, Fla. Stat.

Attorney's Fees

Ruck v. Board of Professional Engineers, 31 Fla. L. Weekly 2553 (Fla. 1st DCA, October 16, 2006)

Ruck appealed a final order of the

Board of Professional Engineers denying his application for licensure by endorsement. *Inter alia*, he argued that the Board should have evaluated the foreign engineering program as one for which accreditation by the Accreditation Board for Engineering and Technology was not available, as required by its own rules. Prior to the District Court's ruling, the Board did conduct such an evaluation, rendering the appeal moot. Ruck argued that the court should rule on the merits of the appeal for the sole purpose of determining his right to attorney's fees.

The court rejected Ruck's argument on the basis of *Lund v. Department of Health*, 708 So. 2d 645 (Fla. 1st DCA 1998). The *Lund* court rejected the request of a physician's personal representative that the appellate court overturn an order of the Department of Health suspending his license. The court found the appeal was moot when the physician died prior to the court taking action on the appeal.

Mary F. Smallwood is a partner with the firm of Ruden, McClosky, Smith, Schuster & Russell, P.A. in its Tallahassee office. She is Past Chair of the Administrative Law Section and a Past Chair of the Environmental and Land Use Law Section of The Florida Bar. She practices in the areas of environmental, land use, and administrative law. Comments and questions may be submitted to Mary. Smallwood@Ruden.com.

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The Florida Bar's website (www.FLORIDABAR.org) offers members the ability to update their address and/or other member information. The online form can be found on the web site under "Member Profile."

Pat Dore Conference Keynote Speech

October 20, 2006

by DOAH Chief Judge Robert S. Cohen

I am honored to stand before you today to deliver the keynote address at the prestigious conference named after Pat Dore, a wonderful professor many of us enjoyed at FSU. Pat served as a mentor to so many of us administrative law practitioners when we were just starting out. We greatly miss her and know she would be proud to have her name associated with an annual conference devoted to Florida administrative practice.

My topic for today is "DOAH: All the process that's due and then some," and I will soon get to that. By now you have been educated in a wide variety of topics such as variances and waivers, bankruptcy issues affecting agencies, attorney's fees, e-rulemaking, retrospectives on 10 years of amendments to the APA, ethics, the new and perhaps improved Model APA, and the always popular case law update by the sub for the sub, Li Nelson. An afternoon of the top 10 cases, JAPC and rulemaking lies ahead, so what

can I possibly say about DOAH that has not or will not be covered in these sessions? Probably not much.

I will say that I have been proud to stand at the helm of DOAH for the past three years, for a variety of reasons. First, I am constantly impressed with the quality of our ALJs. After traveling to conferences around the country, I can easily conclude that ours are as qualified or more qualified than those found in any other state. This fact is confirmed whenever we have an opening and I find myself flooded with applications from some of the finest administrative law lawyers, from both the public and private sectors, in the state. While the decision on filling a vacancy is always difficult to make, I know I cannot be far off because the pool of applicants, so many of whom are in this room today, is so strong.

I have been impressed by the collegiality of our ALJs. Every judge's door is open to discuss procedural

and substantive issues which, I believe, promotes consistency in decision-making. No one's arm is twisted, either by a supervising (or senior as we like to call them) ALJ, to rule a certain way, but the peer review process allows us not to travel down the path to sure review and perhaps reversal at the appellate court level. Our ALJs are extremely independent in their decision-making, yet they guard the due process rights of all who appear before us. I am also happy to announce that we participate in the FSU College of Law's externship program so that students get a peek behind the Wizard's screen where all the delicious baked goods are kept.

Any one of you practitioners who has appeared before one of our ALJs in a pro se matter can vouch for the ALJ's concern with the rights of the pro se party to a fair hearing. I am sure many of you have been frustrated by the ALJ spending a considerable amount of time explaining the

State and Federal Government and Administrative Practice Certification

State and federal government and administrative practice is the practice of law on behalf of public or private clients on matters including but not limited to rulemaking or adjudication associated with state or federal government entity actions such as contracts, licenses, orders, permits, policies, or rules. State and federal government and administrative practice also includes appearing before or presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

If you wish to apply for certification, applications must be postmarked by February 28. Visit The Florida Bar website, www.floridabar.org/certification for application and general information. The examination will be given on October 1, 2007, in Tallahassee and one additional city TBA.

You may contact the certification staff liaison Alexzina Jackson, at ajackson@flabar.org or 850/561-5768, regarding eligibility, certification hours, or exam information.

procedures for presenting the case, even going so far as to remind the pro se to ask questions of the witnesses, not give narratives and conduct debates with them. This is not an easy task, but it is one we ALJs take most seriously. I believe that DOAH is still designed to be a “people’s court” where even the unrepresented can appear and have the opportunity to present his or her case to an impartial arbiter of the dispute who will truly listen to the facts presented, even if presented badly, and render a fair decision following the applicable law in the case. We will not become an advocate for the pro se, but neither will we let the opposing counsel or party take advantage of the pro se’s naiveté. This is our role, to ensure that the concept of “fundamental fairness,” as contemplated by the founders of our great nation, is maintained. Every party charged with a violation of a statute within DOAH’s jurisdiction or aggrieved by the actions of an agency is entitled, at the least, to be notified of the charges or proceedings involving him or her, and the opportunity to be heard in those proceedings. Of course, the provision of due process extends to all parties represented by counsel, contrary to what some government watchdog agency may say about the “high costs of due process.”

Also, with respect to getting your case scheduled and heard by an ALJ, nowhere will you find a more streamlined process than at DOAH. I have spoken with state court judges, court administrators, and court clerks who are amazed at the speed with which we get our cases through the system. If the parties don’t request additional time for discovery or delay the hearing dates to accommodate their busy schedules, there is no reason why almost any case cannot proceed through the process in less than 90-120 days. Compare this with the circuit court where 180 days to trial is a rarity, and occurs only where the parties treat the case as expedited and allow no continuances. Truly, we have a rocket docket at DOAH for those who need their disputes adjudicated expeditiously.

I am able to make these statements about the duty of our ALJs to ensure the parties receive due process because of one important fact: the

overwhelming majority of attorneys who practice in the field of administrative law are ethical, professional, and downright well-qualified to present their cases on behalf of either one of our agencies or their client, be it a company or an individual. The incidence of unprofessional behavior in the administrative forum is significantly lower than in the state court setting. I am able to say this based upon first-hand experience, having practiced in both arenas, but also because of my experiences over the past several years as a member of the Second Circuit Bench/Bar Committee. I can say with great certainty that few administrative lawyers suffer Bar grievances and discipline.

I commend you, as representing the best and brightest of the administrative bar, for avoiding those situations leading to ethical violations, lack of professionalism, and, ultimately, action by The Florida Bar. I am proud to serve such a group, especially when I see what happens every day in our state courts. Let me thank you on behalf of all our ALJs for your professionalism and ethical behavior. I hope you find that we always treat you with the same degree of respect.

Before I close, let me give you a brief update on what is happening at DOAH. I’ll dispense with the Office of Judges of Compensation Claims which is undergoing major improvements, but does not affect administrative law practitioners. In the adjudication of disputes program, however, a lot is happening: First, we are close to launching what we will call the “agency general counsel screen.” This application will allow agency counsel to view a complete list of the agency’s active cases, afford you the ability to generate statistics which are so important to the legislature and executive branches which control us, and to electronically submit your final orders to DOAH when they are issued. We will soon schedule a luncheon for the general counsels to fully demonstrate and launch this exciting new tool. So many of you are currently using our electronic filing system which we appreciate, both for the time saved on our end since we no longer have to scan documents into the system that have been e-filed, but also because it gives our ALJs

immediate access to pleadings filed while we are on the road. This gives us the opportunity to handle motion hearings, or at least to review the pleadings in the evening when we are out of town to help us better serve the parties expeditiously. Next item: DOAH has begun handling claims bills for the Florida Senate. We will conduct the hearings as special masters, and make recommendations to the senate committee which will then issue a final decision to be voted upon by the full Senate. Finally, we have begun handling Medicaid entitlement matters from the Agency for Persons with Disabilities in light of the First DCA’s denial of the Agency’s motion for rehearing in the *J.M. v. Agency for Persons with Disabilities* case. We continue to seek new contracts with non-state entities, which allows us to reduce the cost of providing services to the state agencies.

The cases at DOAH continue to be varied, interesting, and most challenging. You will hear about some the more significant cases this afternoon when Judge Wetherell gives his top 10, but let me tell you that any of our ALJs can regale you with tales of bizarre cases that have seemed to be common fare at DOAH, over the past 30 years, as well as today. In fact, Florida, being the fascinating state that it is, we can apply the words of noted columnist and author, Carl Hiassen, to our work at DOAH over the past decades. Hiassen says, “The weird part is how little things have changed—Florida is as screwy now as it was in the 70s and 80s.” I commend you all to just look at the news: Elian Gonzalez, Presidential elections with pregnant, hanging, and dangling chads (and, no I don’t mean you Judge Adams!), politicians accepting gifts and mishandling campaign funds, alligators eating joggers and swimmers, shark attacks in three feet of water, and, of course, those ever-present (although, thank God, not this year) hurricanes. Now, of course, we don’t see all these cases at DOAH, but we get our share of strange fact patterns. All I can say is you keep bringing DOAH these cases and we’ll keep providing a forum for the fair and impartial adjudication of disputes. We wouldn’t have it any other way.

Meet the DOAH Administrative Law Judges

Compiled by Director and Chief Judge Robert S. Cohen and Administrative Law Judge Linda M. Rigot (Part II of II)

One of the benefits of membership in the Administrative Law Section is the opportunity to get to know the Administrative Law Judges before whom we practice in a variety of contexts—at Section events, in seminars, and here, in print, in the Newsletter. Please take this opportunity to share your Newsletter with non-members and encourage them to join the Section!

Most of the DOAH ALJs are primarily assigned cases by geographic area for easier scheduling and travel. Some are assigned cases on a statewide basis in a specialized subject matter. The first part of this article, which appeared in the September 2006 edition of this Newsletter, gave a brief biographical sketch of the ALJs who hear cases in the northern and middle districts of Florida. Part II features the ALJs who hear cases in the southern district and those who specialize in hearing environmental and health care cases.

The Southern District starts with Indian River County on the north, includes Okeechobee County on the west, and runs south down to Key West.

Southern District

Name: Claude B. Arrington

Colleges, Degrees, and Years:

B.A., The University of the South (1970); J.D., Florida State University (1973)

Year Admitted to the Bar: 1973

Year Employed at DOAH: 1989

Prior Professional Experience:

Associate and Partner, Ruden, Barnett, McClosky, Smith, Schuster and Russell, P.A., in Tallahassee (1985-89); Partner, Thompson and Arrington, in Quincy (1981-85); Associate, Gardner, Shelfer, Mendelson, Duggar and Thompson, in Quincy (1980-81); Research Assistant, First District Court of Appeal (1979-1980); Associate and Partner, Cotten, Shivers, Gwynn, Daniel, Kelley and Arrington, in Tallahassee (1973-79)

Relevant Professional Activities:

Member, Administrative Law Section, The Florida Bar

Name: Patricia M. Hart

Colleges, Degrees, and Years:

B.A., Florida State University (1969); M.S., Florida State University (1973); J.D. with high honors, Florida State University (1981)

Year Admitted to the Bar: 1981

Year Employed at DOAH: 1995

Prior Professional Experience:

Partner, McConnaughay, Roland, Maida and Cherr, P.A., in Tallahassee (1988-95); Associate, Cummings, Lawrence and Vezina, P.A., in Tallahassee (1987-88); Research aide, Florida Supreme Court (1981-83)

Relevant Professional Activities:

Member, Administrative Law and Health Law Sections, The Florida Bar; Member, Tallahassee Women Lawyers

Name: Eleanor M. Hunter

Colleges, Degrees, and Years:

B.A. with highest honors, Bennett College (1968); J.D. with honors, Florida State University (1975)

Year Admitted to the Bar: 1976

Year Employed at DOAH: 1990-2003 and 2006

Prior Professional Experience:

Executive Director, Florida Board of Bar Examiners (2003-06); Sole practitioner/Lobbyist (1987-90); Part-time Associate, Hopping, Boyd, Green and Sams, in Tallahassee (1985-87); Associate, Mahoney, Hadlow and Adams, in Tallahassee (1980-81); Administrative Assistant, Florida Supreme Court (1979-80); Assistant General Counsel, Office of the Governor (1977-79); Law Clerk, Florida Supreme Court (1975-77)

Relevant Professional Activities:

Member, Administrative Law Section, The Florida Bar; Member, National Bar Association

Name: Stuart M. Lerner

Colleges, Degrees, and Years:

B.A. *magna cum laude*, Queens College (City University of New York) (1972); J.D. *cum laude*, State University of New York at Buffalo (1975)

Year Admitted to the Bar: 1975

Year Employed at DOAH: 1989

Prior Professional Experience:

Deputy General Counsel, Florida Public Employees Relations Commission (1984-88); Associate Attorney, University of Florida (1983); Assistant General Counsel, Florida Department of Commerce (1981-83); Assistant General Counsel, Florida Education Association/United (1981); Staff Attorney, Florida Public Employees Relations Commission (1979-81); Assistant Public Defender, Broward County (1975-79)

Relevant Professional Activities:

Member, Administrative Law Section, The Florida Bar

Name: Robert E. Meale

Colleges, Degrees, and Years:

B.A. *magna cum laude*, Florida State University (1973); J.D. with honors, University of Florida (1976); L.L.M., University of Florida (1982)

Year Admitted to the Bar: 1976

Year Employed at DOAH: 1987

Prior Professional Experience:

Partner, Baker and Hostetler, in Orlando (1982-87); Partner, Smith, Mackinnon and Mathews, in Orlando (1978-82); Associate, Pitts, Eubanks, Ross and Rumberger, P.A., in Orlando (1977-78); Associate, Kilpatrick, Cody, Rogers, McClatchey and Regenstein, in Atlanta (1976-77)

Name: J. D. Parrish

Colleges, Degrees, and Years:

B.A., Furman University (1975); J.D., Florida State University (1977)

Year Admitted to the Bar: 1978

Year Employed at DOAH: 1987

Prior Professional Experience:

Assistant Attorney General, Florida Department of Legal Affairs (1985-87); Associate, Potter, McClelland, Griffith, Jones and Marks, P.A., in Titusville (1981-85); Associate, Stromire, Westman, Lintz, Baugh, McKinley, Antoon and Pearce, P.A., in Cocoa (1980-81); Associate, Crofton, Holland, Starling, Harris and Severs, P.A., in Titusville (1978-80)

Relevant Professional Activities:

Member, Administrative Law Section, The Florida Bar

Name: Errol H. Powell**Colleges, Degrees, and Years:**

B.A., University of North Carolina at Chapel Hill (1973); J.D., Florida State University (1978)

Year Admitted to the Bar: 1979

Year Employed at DOAH: 1993

Prior Professional Experience:

Staff Director, Florida House of Representative Ethics and Elections Committee (1990-93); Special Master, Florida House of Representatives Claims Committee (1989-90); Attorney, Florida Department of Professional Regulation (1985-89); Attorney, Legal Services of North Florida, Inc. (1980-85)

Relevant Professional Activities:

Member, Administrative Law and Government Lawyer Sections, Standing Committee on Professionalism, Judicial Committee of the Commission on Professionalism, The Florida Bar; Fellow, The Florida Bar Foundation; Member, Standing Committee on Professionalism, Administrative Law and Regulatory Practice Section, National Conference of Administrative Law Judges, Judicial Division, American Bar Association; Board Member, National Association of Administrative Law Judges; Life Member and Member, Judicial Council and Administrative Law Section, National Bar Association; Member, Virgil Hawkins Florida Chapter, National Bar Association; Member, Historian, and Past President, Tallahassee Barristers Association; Member and Past Treasurer, Tallahassee Bar Association; Member, Tallahassee Women Lawyers and Florida Women Lawyers; Member, Florida Government Bar Association; Past Board Member, National Conference of Administrative Law Judges; Past Chair, Judicial Nominating Procedures Committee, The Florida Bar; Past Chair, Professional Stress Committee, The Florida Bar; Past Member, Second Judicial Circuit Grievance Committee; Past Member, Second Circuit Committee on Professionalism; Past Board Member, Tallahassee Bar Association Legal Aid Foundation.

Name: Florence Snyder Rivas**Colleges, Degrees, and Years:**

B.A. with honors, Faculty Scholar, Florida Atlantic University (1973); J.D., Emory University (1975)

Year Admitted to the Bar:

Georgia (1975); Florida (1976)

Year Employed at DOAH: 2000

Prior Professional Experience:

Partner, Rivas and Rivas, Tallahassee and Boca Raton; Associate and Partner, Milledge Iden and Snyder, (formerly Milledge and Hermelee), Miami; Served on DOAH hearing officer panel for high-speed rail application; General Counsel and Editorial Board member, Palm Beach Newspapers, Inc., in West Palm Beach; Adjunct professor, Florida Atlantic University

Relevant Professional Activities:

Past member, Board of Trustees of the Florida Bar Foundation; Past chair, co-chair, speaker, The Florida Bar's Reporter's Workshop; Past Chair, speaker, The Florida Bar's Media Law Conference; Palm Beach County Bar Association's Juvenile Advocacy Award (1996); Past member, Board of Directors, Legal Aid Society of Palm Beach County; Past member, Board of Trustees, Poynter Institute for Media Studies, in St. Petersburg; Board of Directors, BNA's *Media Law Reporter*; Past member, Board of Regents, Leadership Florida

Name: Larry J. Sartin**Colleges, Degrees, and Years:**

B.S., Florida State University (1967); J.D., Florida State University (1972); LL.M. in taxation, University of Florida (1977)

Year Admitted to the Bar: 1973

Year Employed at DOAH: 1984

Prior Professional Experience:

Assistant General Counsel, Florida Department of Revenue (1981-84); Associate, Dean, Mead, Egerton, Bloodworth, Capouano and Bozarth, in Orlando (1979-81); Associate, Carlton, Fields, Ward, Emmanuel, Smith and Cutler, in Orlando (1979-80); Associate, Mershon, Sawyer, Johnston, Dunwoody and Cole, in Miami (1977-79); State Traffic Courts Director, Supreme Court of Florida (1974-76); Research Assistant, Supreme Court of Florida (1973)

Relevant Professional Activities:

Member, Health Law Section, The Florida Bar

Name: John G. Van Laningham**Colleges, Degrees, and Years:**

B.A., University of Florida (1985); J.D., with highest honors, Florida State University (1988)

Year Admitted to the Bar: 1988

Year Employed at DOAH: 2000

Prior Professional Experience:

Judicial Clerk, Hon. Albert J. Henderson, U.S. Circuit Court Judge, Elev-

enth Circuit (1988-89); Partner, Steel, Hector and Davis, LLP (1989-2000)

Relevant Professional Activities:

Member, Administrative Law and Government Lawyer Sections, The Florida Bar; Member, The Florida Bar Code and Rules of Evidence Committee (2005-present); Past member, Editorial Board of *The Florida Bar Journal* and *The Florida Bar News*

Environmental and Health Care**Name: Donald R. Alexander****Colleges, Degrees, and Years:**

B.A., The Citadel (1962); J.D., University of Florida (1965)

Year Admitted to the Bar: 1965

Year Employed at DOAH: 1980

Prior Professional Experience:

Attorney/ Hearing Examiner, Florida Public Service Commission (1968-80)

Name: J. Lawrence Johnston**Colleges, Degrees, and Years:**

A.B. *magna cum laude*, Boston College (1974); J.D. with honors, Florida State University (1977)

Year Admitted to the Bar: 1977

Year Employed at DOAH: 1984

Prior Professional Experience:

Associate and Partner, Ervin, Varn, Jacobs, Odom and Kitchen, in Tallahassee (1977-83)

Relevant Professional Activities:

Author, article in *The Florida Bar Journal* (1991); Speaker and author, Fifth Annual Advanced Growth Management Short Course, Florida Chamber of Commerce (1994); Presenter, National Association of Administrative Law Judges (2003); Past member, The Florida Bar Second Circuit Grievance Committee; Past member, Second Judicial Circuit Professionalism Committee

Name: William J. Kendrick**Colleges, Degrees, and Years:** B.S.,

University of Tampa (1964); J.D. *cum laude*, University of Miami (1967)

Year Admitted to the Bar: 1967

Year Employed at DOAH: 1984

Relevant Professional Activities:

Assistant Attorney General, Florida Department of Legal Affairs (1983-84); Associate, Partner, and of counsel, Shutts and Bowen, in Miami (1969-81); United States Army/Army Intelligence Corps (1967-69)

MEET THE JUDGES*from page 9***Name: David M. Maloney****Colleges, Degrees, and Years:**

B.A., Florida State University (1971); J.D. with honors, Florida State University (1975)

Year Admitted to the Bar: 1975

Year Employed at DOAH: 1993

Prior Professional Experience:

Director of Regulatory Reform, Governor's Office (1995); Executive Director, Governor's Property Rights Study Commission II (1993-94); Special Assistant to the Administrator, Environmental Protection Agency, Washington (1993); Director of Cabinet Affairs, Executive Office of the Governor (1992-93); General Counsel, Florida Land and Water Adjudicatory Commission and Administration Commission (1990-92); Assistant General Counsel, Governor's Office (1990); Assistant Attorney General, Florida Department of Legal Affairs (1989); Partner, Maloney, Comfort and Goldberg, in Tallahassee (1985-88); Deputy General Counsel, Department of Business Regulation (1978-85); Research Assistant, Florida Supreme Court (1976-78)

Relevant Professional Activities:

Past member, Appellate Rules Committee, The Florida Bar

Name: Linda M. Rigot**Colleges, Degrees, and Years:**

B.A., University of Miami (1966);

J.D. *cum laude*, University of Miami (1969)

Year Admitted to the Bar: 1969

Year Employed at DOAH: 1980

Prior Professional Experience:

Associate, Ress, Gomez, Rosenberg and Howland, P.A., in North Miami (1975-80); Associate, Brickman, Male and Bloom, in Miami (1974-75); Assistant County Attorney, Metropolitan Dade County (1971-74); Law Clerk to Judge Joe Eaton, United States District Court for the Southern District of Florida (1969-71); Research Aide, Office of the Florida Attorney General (1968)

Relevant Professional Activities:

Past Chair and current Executive Council member, Administrative Law Section, The Florida Bar; Steering committee, *Florida Administrative Practice Manual*; Lecturer, The Florida Bar CLE courses; Author, articles in *The Florida Bar Journal* and *Administrative Law Section Newsletter*

Name: Charles A. Stampelos**Colleges, Degrees, and Years:**

B.A., University of Florida (1972); M.A., University of Miami (1973); J.D., College of William and Mary (1976)

Year Admitted to the Bar: Florida (1977); Virginia (1977); District of Columbia (1978)

Year Employed at DOAH: 2000

Prior Professional Experience:

Department of Legal Affairs, State of Florida: Criminal Appeals (1977-80), Cabinet Affairs (1980-82), Criminal

Appeals (Miami Bureau Chief) (1982); Shareholder, McFarlain, Wiley, Cassidy, and Jones, P.A. (1983-2000)

Relevant Professional Activities:

Appellate Rules Committee, The Florida Bar (1984-1994, 1997-2003); Past member, Executive Council, Administrative Law Section, The Florida Bar (1997-2006); Professional Ethics Committee, The Florida Bar (2003-06); Florida Commission on Ethics (1996-2000), Chair (1998-99); Martindale/Hubbell "AV" rating

Name: T. Kent Wetherell, II**Colleges, Degrees, and Years:**

B.S. *magna cum laude*, Florida State University (1992); J.D. with high honors, Florida State University (1995)

Year Admitted to the Bar: Florida (1995); Colorado (1997)

Year Employed at DOAH: 2002

Prior Professional Experience:

Deputy Solicitor General, Office of the Attorney General (1999-2002); Associate, Hopping Green Sams and Smith, in Tallahassee (1995-99); Law Clerk, Judiciary Committee, Florida House of Representatives (1993-94, 1995)

Relevant Professional Activities:

Executive Council, Administrative Law Section, The Florida Bar (2006-); Legislative Chair, Environmental and Land Use Law Section, The Florida Bar (1998-99); Member, Student Education and Admission to the Bar Committee, The Florida Bar (1996-99); Member, Tallahassee Bar Association; Member, National Association of Administrative Law Judges

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EXEMPTION*from page 1*

tal services statutes, Chapter 393, required the provision of a DOAH hearing to persons challenging the denial of eligibility for, or the reduction of, developmental services. The court rejected APD's assertion that the exception in section 120.80(7), created for social and economic programs administered by the Department of Children and Family Services, should be applied to the developmental services that are provided by APD under the Medicaid Waiver. The opinion required APD to provide a formal hearing pursuant to section 120.57(1) to applicants and clients of the agency. At the same time that APD filed its petition with the Administration Commission, it also sought rehear-

ing or rehearing en banc in the *J.M.* case. These requests were denied on October 4, 2006.

In its petition for exemption, APD set forth the grounds for its request for an exception to the requirement that DOAH hear challenges to APD's factual determinations concerning the provision of services to its clients. The petition did not set out the specific alternative requested from the Administration Commission. But the petition concluded by stating that APD "intends to seek an amendment to Chapter 120 during the 2007 Legislative session that would permit the continuation of the current fair hearing process with the DCF hearing officers and thereby provide the Legislature with the opportunity to determine whether the current system is maintained, or to fund and alternative to that system." (sic)

The Executive Office of the Governor held a public hearing on the APD petition for exemption on September 25, 2006. Motions to intervene were filed by two parties and have not yet been ruled on. As of this writing, the Commission has not yet acted on the petition. Stay tuned.

Update: On November 15, 2006, APD withdrew its petition for exemption.

Robin Rosenberg is pro bono counsel for Holland & Knight's Florida offices practicing in the firm's Tampa office. She received her J.D., with high honors from the University of Florida.

Lawrence E. Sellers, Jr. is a partner with Holland & Knight LLP, practicing in the firm's Tallahassee office. He received his J.D., with honors, from the University of Florida College of Law.

Agency Snapshots: *Department of Education*

The Department of Education is the agency responsible for ensuring the quality provision of free education from pre-kindergarten through community college. The Department operates under the supervision of the Board of Education, which consists of seven members appointed by the Governor to staggered four-year terms. The Board of Education in turn appoints the Commissioner of Education.

Head of Agency:

John Winn, Commissioner
Office of the Commissioner
Turlington Building, Suite 1514
325 West Gaines Street
(850) 245-0505
(850) 245-9667 (fax)
Commissioner@fldoe.org

Agency Clerk:

Lynn Abbott
Turlington Building, Room 1514
325 West Gaines Street
Tallahassee, Florida 32399
(850) 245-9661
(850) 245-9667 (fax)

Hours of Operation:

8:30 a.m. - 5:30 p.m.

General Counsel:

Daniel J. Woodring
Florida Department of Education
Turlington Building, Room 1244
325 West Gaines Street
Tallahassee, Florida 32399
(850) 245-0442
(850) 245-9379 (fax)
daniel.woodring@fldoe.org

Mr. Woodring received his J.D. from the University of Florida in 1996. He has served as General Counsel for the Department since 2002. Prior to being appointed to his current position as General Counsel, Mr. Woodring served as counsel to Governor Bush from 1999-2002 and clerked for Judge Robert T. Benton, II of the First District Court of Appeal. Mr. Woodring especially enjoys his work with the Department because of the quality of the attorneys the Department employs and his ability to combine aspects of litigation with policy-making.

Number of Lawyers on Staff:

12

Kinds of Cases:

The Department handles a wide variety of cases before the Division of Administrative Hearings, including bid protests, rule challenges, disputes arising from the Division of Vocational Rehabilitation's determinations of employee qualification for retraining, and challenges to the Bureau of Rehabilitation and Reemployment Services' determinations regarding reemployment.

The Department also handles cases against teachers in administrative hearings before the Educational Practices Commission (EPC) for ethical and other violations that affect their licensure. The EPC serves the function of agency head in determining these license violations and corresponding penalties. These cases comprise the majority of the Department's caseload, with over 3,000 complaints filed against teachers.

Attorneys also litigate cases in state court including collection of

continued...

AGENCY SNAPSHOPS*from page 11*

liens for rehabilitation services provided by the Department, and collection of defaulted loans from student borrowers. In federal court, the Department is currently defending a constitutional challenge to its governing statutes.

In addition to their role as litigators for the Department, attorneys also serve as general counsel to

the Commission on Independent Education, which oversees private two-year secondary educational facilities and consults with the Legislature and other state agencies on issues involving education law.

APA Interaction:

While most of the cases the general counsel's office handles are not APA-related, the majority of their interaction with the APA comes through bid protests and rule challenges. The Department also handles some miscellaneous APA cases, such as dis-

qualifying teachers for cheating on licensure exams.

Practice Tips:

Practitioners representing teachers licensed through the Department should keep in mind the four levels of review a complaint must go through before a case is actually filed. The Commissioner of Education must himself make a probable cause determination before a case is permitted to proceed. This level of scrutiny means that a case is rarely brought that the Department cannot support.

Commission On Ethics

The Florida Commission on Ethics is a 9-member body created by the Legislature as required by the Florida Constitution. Five members are appointed by the Governor, subject to Senate confirmation. Two members are appointed by the Senate President and two by the Speaker of the House. Neither the President nor the Speaker may appoint more than one person from the same political party and the Governor may not appoint more than three members from the same party. No more than five members of the Commission may be from the same political party at any one time. The Commission is a part of the legislative branch. The Commission appoints an executive director to supervise the daily administrative responsibilities.

Executive Director:

Bonnie J. Williams
3600 Maclay Blvd. S., Suite 201
Tallahassee, FL 32312
Phone: (850)488-7864
Fax: (850)488-3077

Agency Clerk:

Kaye Starling
3600 Maclay Blvd. S., Suite 201
Tallahassee, FL 32312

Executive Branch Lobbyist**Registration Office:**

The Pepper Building, Room G-68
111 West Madison Street
Tallahassee, FL
Phone: (850)922-4990

Hours of Operation:

8:00 a.m. - 5:00 p.m., Monday - Friday

General Council:

Philip C. Claypool

Philip C. Claypool has been the Commission's General Counsel and Deputy Executive Director since 1987. Phil was a philosophy major at Purdue and received his J.D. from Florida State University. Most anyone who has been in government any length of time has partaken of the invaluable services Phil and his staff of four lawyers provide in guiding us and our clients through the often-confusing maze of ethics laws. Phil can be reached at P. O. Drawer 15709, Tallahassee, FL 32317-7709, 850-488-7864, claypool.phil@leg.state.fl.us.

The role of the Commission on Ethics is to render opinions and give advice on how to comply with the ethics laws, educate public officers, employees, and others about the requirements of the ethics laws; to render opinions and give advice on how to comply with ethics laws; and to promulgate, receive, and maintain financial disclosure reports.

This legislative agency is made subject to Chapter 120 and its rules are found in Chapter 34 of the Florida Administrative Code. The Ethics Commission's rules apply to virtually all of us in government and it's a good idea to download the Code of Ethics for

Public Officers and Employees (Part III, Chapter 112, Fla. Stat.), as well as Rule Chapter 34 for a handy desk reference. The Commission's website www.ethics.state.fl.us contains much valuable information and provides a user-friendly research capability for ethics opinions and cases.

Cases involving violations of the Code of Ethics are handled pursuant to Chapter 120, as are the smattering of other administrative matters committed to the agency. (See, e.g., PSC (ss. 350.031-350.043); state agencies' use of motor vehicles and aircraft (ss. 287.17-187.175, Fla. Stat.); and agencies' use of public funds to lobby the legislative or executive branches (s. 11.062(2), Fla. Stat.)). The Commission is, of course, involved in the court system when it comes to challenges to the constitutionality of ethics laws and appeals of final orders.

Phil says the best part of serving as General Counsel for the Commission is to have the trust of the Commission members—9 citizens with varied backgrounds from all around the state who have volunteered to make the hard decisions. His best tip is to contact the Commission “early and often.” Commission attorneys have over 780 years of combined experience with the ethics laws and, Phil adds, “we would much rather advise public officers and employees how to comply with the law than investigate them ... although that can be fun, too!”

Minutes — Administrative Law Section Executive Council Meeting

June 23, 2006

Boca Raton, Florida

Approved by Executive Council

I. CALL TO ORDER: Executive Council Chair Debby Kearney called the meeting to order at 10:30 a.m.

Present: Debby Kearney, Booter Imhof, Seann Frazier, Andy Bertron, Charlie Stampelos, Mary Ellen Clark, Linda Rigot, Clark Jennings, Larry Sellers, Cathy Sellers, Cathy Lannon, Kent Wetherell, Elizabeth McArthur, Chris Moore, Allen Grossman, Li Nelson, Bill Williams, Bruce Lamb, Scott Boyd, Josie Tomayo, Barbara Staros, Adrian Rodgers, and Jackie Werndli.

Absent: Cynthia Miller, Rick Ellis, Donna Blanton, and Dave Watkins.

II. PRELIMINARY MATTERS

A. Minutes – January 5, 2006

The minutes of the January 5, 2006, Executive Council meeting were approved with one change: Section II.A was changed to read: “The minutes of the October 14, 2005, Executive Council Meeting were approved with one abstention.”

B. Minutes – January 6, 2006

The minutes of the January 6, 2006, Executive Council retreat were approved.

C. Minutes – February 24, 2006

The minutes of the February 24, 2006, Executive Council meeting were approved.

D. Treasurer’s Report

The Treasurer’s Report was presented by Chris Moore and approved.

E. Chair’s Report

Debby Kearney provided a brief Chair’s report and deferred the rest of her report to closing comments.

III. COMMITTEE/LIAISON REPORTS

A. Continuing Legal Education

Andy Bertron reported that the Section made a profit of \$74 on the Public Utilities Law CLE in January 2006. The Administrative Appeals CLE lost \$1,239 which was absorbed by the Appellate Law Section. The Pat Dore Administrative Law Conference will be held on October 19 and 20, 2006, in Tallahassee, with Seann Frazier and Andy Bertron serving as co-chairs. The Young Lawyers Division (“YLD”) will conduct a basic administrative law CLE on December 6, 2006, in Tallahassee, with video replays around the state to follow. The Administrative Law Section will work with the YLD to provide assistance.

B. Publications

Elizabeth McArthur (after ten years of hard and dedicated work) announced that she would like to transition the newsletter to a new editor within one year. Mary Ellen Clark reported that sixteen agency snapshots have been completed. Debby Kearney and Booter Imhof volunteer to collaborate on agency snapshots covering various departments within the Legislature that would be of interest to administrative practitioners.

C. Legislative

Bill Williams reported extensively on the provisions of Senate Bill 262 that was passed in the 2006 Session of the Florida Legislature and signed by the Governor on July 1. Debby Kearney reported that she has seen bills that include language purporting to amend administrative rules.

D. Public Utilities Law

No report was presented.

E. Membership

Charlie Stampelos reported that the Section membership increased slightly from 1182 members to 1197 members.

F. Webpage

Cathy Lannon reported that many updates have been added to the webpage thanks to the work of Daniel Nordby. Section newsletters will now be posted to the website after publication.

G. Uniform Rules of Procedure

Debby Kearney reported that the analysis of revisions to the Uniform Rules of Procedure has been assigned to a new attorney in the Governor’s Office, and will be a summer project. Linda Rigot reported that the Uniform Rules Subcommittee met to discuss comments received from the Department of Revenue and after consideration, decided not to submit any further amendments or comments to the Governor’s Office.

H. Long Range Planning

Booter Imhof reported that the Board of Governors approved the changes to the Section’s by-laws that were first discussed and drafted at the last long range planning retreat.

I. Board of Governors Liaison

Larry Sellers reported that the Board of Governors approved the Bar’s budget with no change in dues. Larry also reported that the Board is considering amending the new inventory rule to create a possible exemption for government lawyers.

J. Law School Liaison

Cathy Sellers reported that she has narrowed the dates for the Section’s panel discussion and reception at the FSU College of Law to four dates in

continued...

MINUTES – JUNE 23, 2006*from page 13*

late September and early October. She anticipates a four-person panel with representatives from DOAH, state agencies, and private practice. Cathy also reported that she has ten law school students in her administrative law class that are seeking mentors. Anyone interested in mentoring a student should contact Cathy at csellers@broadandcassel.com.

K. CLE Committee Liaison

Andy Bertron reported that the Florida Bar CLE Committee voted to endorse a proposal by the Equal Opportunities Law Section to amend Rule 6-10.3(b) of the Rules Regulating the Florida Bar by adding bias elimination to the five-hour requirement for ethics and professionalism.

L. Council of Sections

Clark Jennings reported that the Council of Sections will conduct a leadership seminar in July at the Florida Bar and Florida Supreme Court for new Section officers.

M. Section Liaison

1. Environmental and Land Use Law – No report.
2. Health Law – No report.

IV. OLD BUSINESS**A. Uniform Rules of Procedure**

The Uniform Rules of Procedure

were discussed during Committee Reports. (See III.G above.)

B. Administrative Subcommittee, Appellate Court Rules Committee

The Subcommittee recommended that the Executive Council not take a position on potential amendments to Rule 9.310(b)(2) of the Rules of Appellate Procedure. After discussion, it was agreed to make Charlie Stempellos, Cathy Lannon and Bill Williams available to the Appellate Court Rules Committee for consultation.

V. NEW BUSINESS**A. Officer/Executive Council Elections**

The Nominating Committee nominated the following candidates for Executive Council officers in 2006-2007: Chair-elect – Andy Bertron; Secretary – Elizabeth McArthur; Treasurer – Seann Frazier. The Nominating Committee nominated the following candidates to terms on the Executive Council beginning in June 2006 and expiring in June 2008: Scott Boyd, Clark Jennings, Bruce Lamb, Cathy Lannon, Wellington Meffert, Cathy Sellers and Kent Wetherell. Li Nelson moved both slates of nominees and after second by Booter Imhoff, all nominations were approved by unanimous vote.

B. Sunsetting of Legislative Positions – 2004-2006 Biennium

Jackie Werndli reported that the Section must readopt legislative positions every two years. Cathy Lannon expressed concern that some of the Section's legislative positions were blanket positions that were too broad, such as opposing all exemptions from the APA. After discussion, Bill Williams moved to readopt the Section's legislative positions without change. Linda Rigot seconded and the motion passed with Cathy Lannon voting in opposition and Scott Boyd abstaining.

VI. INFORMATIONAL

No report.

VII. FINAL REMARKS AND PRESENTATION OF AWARDS – Outgoing Chair

Debby Kearney thanked the Council members for their hard work and recapped the year's activities.

VIII. PROGRAM OUTLINE & CLOSING COMMENTS – Incoming Chair

Booter Imhoff reported that he has been working with current Council members on new committee assignments and will be contacting new Council members in the coming weeks about their committee preferences.

Debby Kearney moved that the Council adjourn at 12:20 p.m.

Minutes — Administrative Law Section Executive Council Meeting September 8, 2006 Tallahassee, Florida

Not yet reviewed or approved by Executive Council

I. CALL TO ORDER: Executive Council Chair Booter Imhof called the meeting to order at 2:05 pm.

Present: Booter Imhof, Clark Jennings, Debby Kearney, Andy Bertron, Li Nelson, Elizabeth McArthur, Kent Wetherell, Cathy Sellers, Wellington

Meffert, Bruce Lamb, Linda Rigot, Bill Williams, Donna Blanton, Cynthia Miller, Mary Ellen Clark, Cathy Lannon, Dave Watkins, Scott Boyd, Larry Sellers, Amy Schrader, and Jackie Werndli.

Absent: Seann Frazier and Allen Grossman.

II. PRELIMINARY MATTERS**A. Minutes — June 23, 2006**

The minutes of the June 23, 2006, Executive Council meeting were approved.

B. Treasurer's Report

Jackie Werndli presented the

treasurer's report and reviewed the budget statements with the council, noting that reports should be available soon to show on a monthly basis the expense allocations under the new expense sharing process.

C. Chair's Report

Deferred to new business.

III. COMMITTEE/LIAISON REPORTS

A. Continuing Legal Education

Andy Bertron provided an update on planning for the upcoming Pat Dore Conference, noting that the final brochure has been circulated, and urging council members to send brochures to anyone who might have an interest in attending. Andy also reported on the upcoming Young Lawyers' Division Basic Administrative Law CLE that will be held in December. Seann Frazier, Li Nelson, and Cathy Sellers put this program together, and it will be presented live in Tallahassee with videotaped showing elsewhere in the state.

Booter Imhof asked for help identifying section members who can be available at out of town seminar sites to help with the section membership drive.

B. Publications

Debby Kearney reported that she has an article for *The Florida Bar Journal*, and has completed two agency snapshots for the Section's Newsletter.

Elizabeth McArthur reported on upcoming features for the Newsletter, including a two-part series on Administrative Law Judge biographical summaries compiled by DOAH Chief Judge Bob Cohen and Administrative Law Judge Linda Rigot.

Mary Ellen Clark provided an update of agency snapshots, completed and in the works. Cathy Sellers volunteered to prepare a snapshot for the Agency for Persons with Disabilities. As part of the agency snapshot feature, it was suggested that the council keep a directory or roster of general counsels, which could be published in the Newsletter and kept on the section website. Cathy Lannon suggested a feature for the Newsletter like *The Florida Bar Newsletter's* "on the move" for general counsels.

C. Legislative

Bill Williams reported no legislative activity. Linda Rigot reported that the Senate Committee on Governmental Oversight was conducting a study on all APA exemptions in sections 120.80 and .81 (not on those in other statutes). The Committee is contacting agencies with exemptions, requesting explanations on why there is an exemption and if the exemption is still needed or not. Cathy Lannon noted that she received inquiries on some exemptions that are not in the APA.

D. Public Utilities Law

Cindy Miller reported on an upcoming CLE offered by the Federal Communications Bar Association, on November 16 at the Mary Brogan Museum, covering telephone and energy issues.

E. Membership

Kent Wetherell reported that section membership appears down slightly, but Jackie Werndli explained that there is a timing issue with the reports, with some overlaps, and the membership count would catch up as of the Pat Dore Conference. Kent Wetherell noted that a new service that the section will be able to offer new members will be the Listserv idea to be discussed under new business.

F. Webpage

Kent Wetherell agreed to substitute for Elizabeth McArthur as a member of the Webpage committee. The committee will be looking into whether to enter into a new contract to replace the Black Group given William Black's decision to close business.

G. Uniform Rules of Procedure

Linda Rigot reported that a notice of rule development on the uniform rules of procedure was published in the September 1, 2006 issue of the *Florida Administrative Weekly*. Linda Rigot contacted one of the identified contact persons and was told that the person who would be in charge of this rule development was June McKinney Bartelle in the Attorney General's office. Linda Rigot called Ms. McKinney Bartelle and offered the council's report that summarized the rationale for considering certain

changes. Ms. McKinney Bartelle said that she had not reviewed the council's work product, but would consider it as a comment received for rule development. She said that council members could attend the workshop and could provide a draft of a declaratory statement rule, and that too would be considered as a comment received. The rule development workshop is September 21 at The Capitol, 10am, Conf Room 2103, 21st floor.

Donna Blanton moved that the council agree to having Linda Rigot go to the workshop to give a history of the uniform rule development and the council's involvement, and to discuss the process and time put into developing the council's proposal and explanations. Elizabeth McArthur seconded the motion, and the motion passed.

H. Long Range Planning

Andy Bertron reported that some concern had been expressed about the proposed date of January 5 for the long range planning retreat because it was so close to the holidays. There was general agreement to try to identify alternative dates. Melhana Plantation is the likely site; they just completed a renovation and are being competitive in an attempt to get business. Andy Bertron solicited suggestions for the agenda.

I. Board of Governors Liaison

Larry Sellers provided substantial material and information for the council, including the prospect of repealing the new requirement for designation of an inventory lawyer as to government lawyers; reconsideration of an old ethics opinion regarding representing members of a local government commission by an attorney who has represented the commission, with the conclusion that there may be cases where it is allowable to represent individual members; issuance of a report by the Cox Commission regarding updating the Bar's disciplinary system; the Judiciary Committee's consideration of new ways to evaluate judges; and consideration of a recommendation to expand the areas for the 5-hour CLE requirement to cover ethics, professionalism, and bias elimination in the legal system.

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J. Law School Liaison

Cathy Sellers reported that the panel discussion event at FSU will be held on October 4, from 4:30 to 7 pm. The panel discussion will be held until 6 pm, following by a reception. The event is open to students, lawyers, professors. Panel members will be DOAH Chief Judge Bob Cohen, and executive council members Mary Ellen Clark, Andy Bertron, and Scott Boyd. Cathy Sellers has spoken with APA-related professors, who will strongly encourage students to attend. The SBA is also publishing notice. Jackie Werndli will try to add notice of this event in The Florida Bar News, in the September issue of the section newsletter which is in the final stages of preparation, and on the Bar's website.

K. CLE Committee Liaison

Cathy Lannon reported that there is an upcoming meeting and retreat in Ponte Vedra, and she will attend.

L. Council of Sections

Mary Ellen Clark reported that there will be a meeting on Saturday, and she will attend. Clark Jennings reported that he attended the last meeting, which was abbreviated with no news to report.

M. Section Liaison

1. Environmental and Land Use Law – No report.

2. Health Law – No report.

3. YLD Liaison – No report.

N. DOAH Update

New Administrative Law Judge Li Nelson reported that she is thoroughly enjoying her new position.

O. Appellate Court Rules ad hoc Committee

Bill Williams reported that there was a subcommittee meeting on Aug. 17 of the appellate rules committee to address Fla.R.App.P. 9.310 (b)(2), automatic stays for public bodies and whether there is a conflict with Section 120.68. The subcommittee voted to add a clause to do away with automatic stays for public bodies appealing order arising under APA. This will go to full appellate rules committee for vote, and Bill Williams has been asked to come to the committee meeting to answer APA-related questions. It was noted that the council had voted previously not to take a position on this issue, and it was agreed that Bill Williams' appearance before the appellate rules committee at its request would not be on behalf of the council.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

Listserv

Jackie Werndli reported about the new Listserv mechanism, noting that she was sorry Daniel Nordby was not here to talk about it, but that there

were materials in the agenda packet for members to review. Daniel Nordby has the ability to set up a Listserv email notification system now. The Environmental and Land Use Law Section set up Listserv 4 years ago, and their experience could point the way to some problems and solutions, such as use of a gatekeeper to control what gets posted to the Listserv group. Some potential uses of Listserv including posting the newsletter right away, and circulating ads for CLE courses. Overall, Jackie Werndli thinks this is a good idea if we consider some of the problems and address them.

Certification

Linda Rigot expressed a concern about the process used to identify recommended persons to serve on the certification committee. Booter Imhof noted this concern, and stated that a letter making recommendations reflected his individual position.

Larry Sellers gave an overview of the process, noting that the package of applications for certification committee membership had been sent to President Cox, and he will be reviewing it. It is not uncommon for the President to ask for input by the relevant section chairs, and he thought the President understood that the input provided was individual input by the chairs.

On motion, duly seconded, the meeting was adjourned at 4 pm.

Respectfully submitted,
Elizabeth McArthur
Secretary



The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399-2300

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